

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 4
Mtg. Date April 21, 2015
Dept. Public Works

Item Title: San Diego Pooled Insurance Program Authority

Staff Contact: Mike James, Public Works Director

Recommendation:

Adopt a resolution (**Attachment B**) providing its written authorization to the dissolution of the San Diego Pooled Insurance Program Authority.

Item Summary:

On March 26, 2015, the San Diego Pooled Insurance Program Authority (SANDPIPA) Board of Directors held a meeting to decide to continue the SANDPIPA model or to move forward with the dissolution process with a planned run-off of all outstanding liability and join the California State Association of Counties Excess Insurance Authority (CSAC) for excess liability coverage. A vote was held after a thorough discussion and it was unanimously decided to move forward with the dissolution process.

The staff report (**Attachment A**) describes in greater detail the March 26th Board meeting, liability coverage for the City in its new model, and future excess liability coverage options.

Fiscal Impact:

In Fiscal Year 2015/16 there will be a nominal decrease to the City's annual premium. For future years there may be savings and return of equity with the potential dissolution of SANDPIPA.

Environmental Review:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 4

Mtg. Date April 21, 2015

Item Title: San Diego Pooled Insurance Pooled Authority

Staff Contact: Mike James, Public Works Director

Background:

Since April 1, 1986, the City of Lemon Grove entered into a joint powers agreement with various other cities, entitled "San Diego County Cities Joint powers Agreement creating the San Diego Pooled Insurance Protection Authority (SANDPIPA) for Municipal Entities," to provide for and administer a risk management and insurance program.

Discussion:

Since 2014, in light of the General Manager's retirement announcement, the SANDPIPA Board of Directors (Board) has been discussing options for moving forward. Options may include backfilling the General Manager position, implementing a different management process, or dissolving the organization and each city will find a different risk management and insurance program. Each of the options were previously presented and discussed at the City Council meetings on February 17th and March 17th.

On March 26, 2015, the SANDPIPA Board held a meeting to come to a final decision to continue with the SANDPIPA model or to move forward with the dissolution process with a planned run-off of all outstanding liability while also encouraging each individual member city to join the California State Association of Counties Excess Insurance Authority (CSAC) for excess liability coverage for a minimum one-year period. After receiving a presentation from the General Manager and the consulting team, the Board voted unanimously (12-0) to move forward with the dissolution process.

In light of the SANDPIPA's Board decision, staff recommends that the City rescind its notice of intent to withdraw from SANDPIPA and enter into agreement CSAC as the City's excess liability insurance coverage provider. The change in excess liability insurance coverage does not negatively impact the level of service or coverage that the City will have in FY 2015/16. The City will continue to receive the same coverage (e.g. general liability, crime, cyber, pollution, and property). The only noticeable change that will occur is the City's general liability self-insured retention which will reduce from \$125,000 to \$100,000. Staff anticipates that in FY 2015/16 there will be a nominal decrease in the City's annual premium. Furthermore, the City will likely begin to receive a portion of its share of equity in the form of dividends during the dissolution process. It is also important to note that the SANDPIPA Board Council recommended two amendments to the SANDPIPA by-laws that were created to protect each member's right to its share of equity. Those changes are shown on page 21 of **Attachment B – Exhibit 1**.

In looking forward to FY 2016/17 and beyond, staff recommends moving forward with soliciting proposals to provide general liability and workers compensation excess insurance coverage as well as third party administrative services. Based on the responses received, staff will return to the City Council with a recommendation for approval that may or may not include continuing with CSAC as its excess insurance liability coverage provider beyond the initial one-year term.

Attachment A

Conclusion:

Staff recommends that the City Council adopt a resolution (**Attachment B**) providing its written authorization to the dissolution of the San Diego Pooled Insurance Program Authority. |

Attachment B

RESOLUTION NO. 2015 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA PROVIDING ITS WRITTEN AUTHORIZATION TO THE DISSOLUTION OF THE SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY

WHEREAS, on April 1, 1986, the City entered into a joint powers agreement with other San Diego County cities, entitled "San Diego County Cities Joint Powers Agreement Creating the San Diego Pooled Insurance Protection Authority for Municipal Entities (SANDPIPA)"; and

WHEREAS, the purpose of participating in the joint powers authority was to provide for and administer a risk management and insurance programs; and

WHEREAS, the SANDPIPA Board, representing the member agencies, has determined that it is in the best interest of SANDPIPA members and in the public interest that SANDPIPA should be terminated, and its assets distributed to members per the joint powers agreement; and

WHEREAS, the City hereby provides its written consent to the termination of SANDPIPA per Article 25 of the joint powers agreement, effective July 1, 2016, with SANDPIPA to continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to wind up the affairs of the Authority; and

WHEREAS, the City hereby agrees to an amendment the joint powers agreement (**Exhibit 1**), substituting "the Board of Directors" for "the Executive Committee" in Article 25.B of the joint powers agreement, so that powers of the Authority will be vested in the Board of Directors; and

WHEREAS, the City hereby agrees to an amendment of the joint powers agreement in Article 25.A adding "distribution of dividends," after "disposing of all claims," so that the Board of Directors is expressly authorized to continue to distribute dividends, in accordance with the "plan document" referenced in Article 26, during the period of winding up and dissolving the business affairs of the Authority. The following language is added to Section 25.A: "Withdrawn or cancelled members are entitled to participate in dividend distributions after accounting for their Board determined share of administrative expenses. |

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Directs the City Manager or designee to rescind the notice of intent to withdraw; and
2. Authorizes the City's Board representative to facilitate the dissolution process; and
3. Directs the City Clerk to communicate this resolution to the SANDPIPA. |

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Attachment B – Exhibit 1

SAN DIEGO COUNTY CITIES JOINT POWERS AGREEMENT FOR RISK MANAGEMENT AND RELATED INSURANCE COVERAGES CREATING THE SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY FOR MUNICIPAL ENTITIES (SANDPIPA)

WHEREAS, certain signatory members of the San Diego County Cities Joint Powers Agreement for Risk Management and Related Insurance Coverages desire to create a separate and independent joint powers authority for the purpose of establishing and administering an insurance program involving risk sharing; and

WHEREAS, participation by eligible municipal entities shall be wholly voluntary; and

WHEREAS, Government Code Section 6500 et seq. provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties; and

WHEREAS, Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, Government Code section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4; and

WHEREAS, each of the parties to this agreement desires to join together with the other parties for the purpose of pooling certain self-insured claims and losses, as provided in Government Code Section 990.8, and jointly purchasing excess insurance and administrative services in connection with an insurance program for said parties;

NOW, THEREFORE, for and in consideration of the mutual advantages to be derived therefrom and in consideration of the execution of this agreement by other public entities, it is hereby agreed that San Diego Pooled Insurance Program Authority For Municipal Entities be created as follows:

SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY FOR MUNICIPAL ENTITIES

This agreement is made and entered into the County of San Diego, State of California, by and among the cities organized and existing under the laws of the State of California, hereinafter referred to collectively as "cities" and individually as "city," which are parties signatory to this agreement. Said cities are sometimes referred to herein as "parties."

Attachment B – Exhibit 1

ARTICLE 1 DEFINITIONS

The following definitions shall apply to the provisions of this agreement:

- A. "Assessment" shall mean the amount due and payable by the city in excess of the premium for valid claims.
- B. "Auditor" shall mean that person appointed by the board who is required to draw warranties on behalf of the authority and provide for an annual audit, in accordance with the law and the bylaws.
- C. "Authority" or "SANDPIPA" shall mean the San Diego Pooled Insurance Program Authority for Municipal Entities created by this agreement.
- D. "Board of Directors" or "Board" shall mean governing body of the Authority.
- E. "City" or "cities" shall mean general law or charter cities, established under the laws of the State of California, which are signatory members of the authority; provided, however, that this definition shall not be construed to prevent the Authority from extending insurance coverage to any subsidiary, conditions approved by the board.
- F. "Claim" shall mean demands made against the cities which are within the Authority's insurance program.
- G. "Clerk" shall mean the person of the Authority who is so appointed by the board under the bylaws.
- H. "Earned premium" shall mean earned premium as defined in the California Insurance Code.
- I. "Excess Insurance" shall mean that insurance which may be purchased on behalf of the Authority to protect the funds of the cities against catastrophic losses or an unusual frequency of losses during a single year.
- J. "Executive Committee" shall mean the Executive Committee of the board of Directors of the Authority.
- K. "Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Authority.
- L. "Incurred Loss" shall mean total expenses for payment of a claim, including reserves therefore.

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- M. "Insurance" shall mean self-insurance through risk-pooling funded program, and/or any commercial insurance contract, and the context requires.
- N. "Insurance Program" shall mean insurance and risk management programs offered by or through the Authority.
- O. "Insurance Year" shall mean a period of time, usually twelve (12) months, determined by the Executive Committee into which each element of the insurance program is segregated for ease in determining premiums, incurred losses, and assessments.
- P. "Memorandum of Insurance" shall mean the basic liability self-insurance program funded by risk-sharing, issued through the Authority in policy form.
- Q. "Premium" shall mean the amount determined by the Board annually as necessary to fund the insurance program of the Authority.
- R. "Pro forma statement" shall mean a projection of estimated losses, expenses, premiums, assessments, and other revenues for a reasonable period, for any insurance offered by the Authority.
- S. "Program Underwriter" shall mean an individual or legal entity, either under contract or employed by SANDPIPA, to provide underwriting services.
- T. "Reserves" shall mean funds not yet committed to the payment of a valid claim but held for the payment of the claims.
- U. "Risk Management" shall mean the process of identifying, evaluating, reducing, transferring, sharing, and eliminating risk. Risk management includes various elements of insurance, law, administration, technology, accounting, and general business to effectively manage hazards and losses to which member cities may be exposed.
- V. "Risk Manager" shall mean the manager of day-to-day affairs of the authority, appointed by the board.
- W. "Risk pooling or sharing" shall mean any common fund: (1) which is composed of cash, investments permitted by Government Code Section 53601 et seq., or other assets; (2) to which two or more members of the Authority have agreed to contribute in accordance with the terms of the contract or memorandum of insurance of insurance in which participation is voluntary; (3) from which claims and risk management costs of any contributor to that common fund shall be paid; and (4) which operates in accordance with this joint powers agreement.
- X. "Self-insurance" shall mean providing for claims, losses, and risk management by risk-pooling and the maintenance of reserve funds by the city.
- Y. "Self-insured retention" or "retained limit" shall mean the amount below which a city is

Attachment B – Exhibit 1

liable, at its own expense, under the Memorandum of Insurance.

- Z. "Underwriting Committee" shall mean standing committee to be established by the Board, comprised of a chairman (elected from the Board) and two or more members-at-large from participating agencies.

ARTICLE 2 PURPOSES

This agreement is entered into by cities pursuant to the provisions of the Government Code Sections 990.4, 990.8, and 6500 et seq. in order to provide comprehensive and economical public liability coverage and coverage for other risks to which the Board of Directors may agree. Additional purposes are to reduce the amount of frequency of losses and to decrease the cost incurred by cities in the handling and litigation of claims. These purposes shall be accomplished through the exercise of the power of such cities jointly in the creation of a separate entity, the San Diego Pooled Insurance Program Authority For Municipal Entities (the "Authority"), to administer an insurance program pursuant to which the cities will pool certain losses, claims, and funds, jointly purchase excess insurance (if available) and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal, and related services.

It is also the purpose of this agreement to provide, to the extent permitted by law, for the inclusion, at a subsequent date, of such additional cities as may desire to become parties to this agreement and members of the Authority, subject to approval by the Board of Directors.

ARTICLE 3 PARTIES TO THE AGREEMENT

Each party to this agreement certifies that it intends to and does contract with all other parties who are signatories of this agreement and, in addition, which such other parties as may later be added as parties to and signatories of this agreement pursuant to Article 21. Each party to this agreement also certifies that the deletion of any party from this agreement, pursuant to articles 22 and 23, shall not affect this agreement nor such party's intent to contract, as described above, with the other parties to the agreement then remaining.

ARTICLE 4 TERMS OF THE AGREEMENT

This agreement shall become effective upon the first day it has been executed by two cities.

ARTICLE 5 CREATION OF AUTHORITY

Pursuant to section 6500 et seq. of the Government Code, there is hereby created a public entity, separate and apart from the parties hereto, to be known as the San Diego Pooled Insurance

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Program Authority For Municipal Entities. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this agreement or to any city.

ARTICLE 6 POWERS OF AUTHORITY

- A. The Authority shall have the powers common to cities and is hereby authorized to do all acts necessary for the exercise of said common powers, including, but not limited to, any or all of the following:
1. To make and enter into contracts, including contracts of insurance and self-insurance for its members providing the risk-pooling or sharing, whether or not subject to regulation under the insurance code, to the extent and in the manner permitted under Government Code Sections 990.4, 990.8, and 6508, or any other provisions of law;
 2. To incur debts, liabilities, or obligations;
 3. To acquire, hold, or dispose of property, contributions and donations of property, funds, services, or other forms of assistance from persons, firms, corporations, and governmental entities;
 4. To sue and be sued in its own name; and
 5. To exercise all powers necessary and proper to carry out the terms and provisions of this agreement, or otherwise authorized by law.
- B. Said powers shall be exercised pursuant to the terms hereof and in the manner provided by law.

ARTICLE 7 BOARD OF DIRECTORS

- A. The Authority shall be governed by the board of Directors which is hereby established and which shall be composed of one representative from each city, who shall be selected by the city manager of that city. Each city in addition to appointing its members of the Board, shall appoint at least one alternate. Each director and each alternate shall have a staff employee of that city. The alternate appointed by a city shall have the authority to attend, participate in, and vote at any meeting of the Board when the regular member for whom he or she is an alternate is absent from said meeting.
- B. Each director or alternate of the board shall serve until a successor is appointed. Each director or alternate shall serve at the pleasure of the city by which he or she has been appointed.

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- C. Each director or alternate shall have one vote.

ARTICLE 8 POWERS OF THE BOARD OF DIRECTORS

The Board of Directors of the Authority shall have the following powers and functions:

- A. The Board shall elect from its members, pursuant to Article 10 of this agreement, an Executive Committee.
- B. The Board may review all acts of the Executive Committee and shall have the power to modify and/or override any decision or action of the Executive Committee upon a majority vote of the entire Board of Directors.
- C. The Board shall review, modify, if necessary, and approve the annual operating budget of the Authority prepared by the Executive Committee, pursuant to Article 11(d).
- D. The Board shall receive and review periodic accounting of all funds under Articles 16 and 17 of this agreement.
- E. The Board shall have the power to conduct, on behalf the Authority, all business of the Authority, including that assigned to the Executive Committee which the Authority may conduct under the provisions hereof and pursuant to law.
- F. The Board shall have such other powers and functions as are provided for in this agreement or in the bylaws.

ARTICLE 9 MEETINGS OF THE BOARD OF DIRECTORS

- A. Meetings. The Board shall provide for it's regular adjourned regular, and special meetings upon call of the president of the Board; provided, however, that it shall hold at least one regular meeting annually, as set forth in the bylaws.
- B. Minutes. The clerk of the Authority shall cause minutes of regular, adjourned regular, and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to each city.
- C. Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. A vote of the majority of those members present at a meeting shall be sufficient to constitute action by the Board, except as otherwise specifically set forth in this agreement or in the bylaws.

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- D. Compliance with the Brown Act. All meetings of the Board, including, without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions for the Ralph M. Brown Act, Government Code section 54950 et seq.

ARTICLE 10 EXECUTIVE COMMITTEE

- A. There shall be an Executive Committee of the Board of Directors which shall consist of at least three members, as provided in the bylaws. The members of the Executive Committee shall include the president of the Board of Directors; the remainder of the members shall be elected by the Board of Directors from its members, as provided in the bylaws.
- B. Vacancies on the Executive Committee shall be filled as provided in the bylaws.

ARTICLE 11 POWERS OF THE EXECUTIVE COMMITTEE

The Executive Committee may be delegated the following powers:

- A. Determine details of and select the insurance program of the Authority.
- B. Determine and select all insurance, including excess insurance, necessary to carry out the programs of the Authority.
- C. Have Authority to contract for or develop various services for the Authority, including, but not limited to, claims adjusting, loss control, legal defense, and risk management consulting.
- D. Cause to be prepared the operating budget of the Authority for each fiscal year, subject to review, modification, and approval by the Board, as provided for in Article 8(c).
- E. Receive and act upon reports of the risk manager and committees of the Authority, as provided in the bylaws.
- F. The authority to hire persons as the Executive Committee deems necessary for the administration of the Authority.
- G. Exercise general supervisory and policy control over the risk manager.
- H. Direct investment of funds collected by the Authority.
- I. Such other powers and functions as are provided for pursuant to this agreement.

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ARTICLE 12 MEETINGS OF THE EXECUTIVE COMMITTEE

The meetings of the Executive Committee shall be held and conducted as provided in the bylaws. The Committee shall make periodic reports to the Board of Directors, advising the Board of its decisions and activities.

ARTICLE 13 OFFICERS OF THE AUTHORITY

- A. President and Vice President. The Board shall elect a president and vice president of the Authority at its first meeting in January of even-numbered years, each to hold office until a successor is elected. In the event the president or vice president so elected ceases to be a member of the Board, the resulting vacancy in the office of president or vice president shall be filled at the next regular meeting of the Board held after such vacancy occurs. The Executive Committee may appoint an interim president or vice president pending action by the Board of Directors. In the absence or inability of the president to act, the vice president shall act as president. The president, or in his or her absence the vice president, shall preside at and conduct all meetings of the Board and shall chair the Executive Committee.
- B. Treasurer. The treasurer shall be appointed by the Board. The duties of the treasurer are set forth in Articles 16 and 17 of this agreement.
- C. Attorney. The Board shall appoint an attorney for the Authority.
- D. Other Officers. The Board shall have the power to appoint, or to delegate to the Executive Committee the power to appoint, the auditor and clerk and such other officers as may be necessary to carry out the purpose of this agreement.

ARTICLE 14 INSURANCE COVERAGE

- A. The Authority shall maintain levels of insurance coverage for cities determined by the Board of Directors to be reasonably adequate.
- B. The insurance coverages provided by the Authority may include protection for motor vehicle, personal injury, property damage, errors and omissions, contractual, or comprehensive general liability, or such other areas of coverage as the Executive Committee may recommend to the Board.
- C. Upon Request, a city tendering a claim under any risk sharing insurance program of the Authority shall be entitled to select a legal defense firm from among those acceptable to under contract with the Authority.

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- D. The Board may arrange for a group policy to be issued for cities interested in obtaining additional coverage at an additional cost to those cities.
- E. The Board may arrange for the purchase of excess insurance. The Board may discontinue purchase of excess insurance if no longer available or needed to protect the Authority's funds.

ARTICLE 15 IMPLEMENTATION OF THE INSURANCE PROGRAM

- A. Program Formation; Appointments. As soon as practicable after the effective date of this agreement, the Board of Directors shall determine the insurance coverages to be provided as permitted in Article 14, the amount of premiums therefore, established precise cost allocation plans and formulas, provide for the handling of claims, establish pro forma statements of each risk-pooling or other type of insurance program, and specify the amounts and types of excess insurance, if any, to be procured. In addition, the Board shall appoint an Underwriting Committee, Claims Review Committee, and Program Underwriter as soon as practicable. Vacancies on such committees shall be filled by action of the Executive Committee on an interim basis until such time as the Board acts to fill such vacancies.
- B. Premiums and Assessments. The premiums and assessments for each city for any risk-pooling program shall be recommended by the Underwriting Committee and approved by the Board.
- C. Annual Adjustments. The cost allocation plans and formulas adopted by the Board shall provide for an adjustment in each cities premiums following the first year of operation of each program, and annually thereafter, to produce a premium for each year, for each city, for each risk-pooling program, which shall consider the following five items:
 - 1. The city's incurred losses for each risk pooling program; and
 - 2. The city's share of such losses and other expended for each risk pooling program as a proportion of all cities such losses; and
 - 3. The city's contribution to reserves, including reserves for incurred-but-not reported losses, for each risk-pooling program; and
 - 4. The city's share of costs to purchase excess insurance, if any; and
 - 5. The city's share of costs to purchase any additional coverage, as provided in article 14(c).
- D. Notice of Premiums. Premium adjustments shall be made annually, and notices of premiums shall be distributed at least sixty (60) days prior to the close of each insurance

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year. All premiums shall be due at payable within thirty (30) days after the effective date of coverage, except as provided in Article 20.

- E. Payment of premiums or Assessments Over Time. Inasmuch as some cities may experience an unusual frequency of losses during a single insurance year which would increase their subsequent premium substantially above the premium for that risk sharing program for the insurance year, or result in an assessment, and cause budgetary problems, the Board may allow for payment of a portion of such subsequent premium or assessment to be made over a period of time not to exceed five years, with reasonable interest.
- F. Underwriting Practices. Underwriting practices shall be generally consistent with industry standards in order to stabilize premiums and permit purchases of excess coverage, and other coverages supplemental to the Memorandum of Insurance.
1. Underwriting Committee. All matters dealing with the scope of coverage and limits of liability provided under the Memorandum of Insurance shall be the primary responsibility of the standing committee established by the Board called the "Underwriting Committee." The Committee shall also be responsible for recommending premiums and assessments to the Board. The Underwriting Committee shall receive advice from the Program Underwriter Decisions of the Underwriting Committee will be reviewed and acted upon by the Board. A majority of vote of the entire Board shall be required to overrule a decision if the Underwriting Committee in all matters.
 2. Program Underwriter. The program Underwriter selected by the board shall be independent of any broker or insurer with contracts with the Authority and shall not be a staff employee of any party. The Program Underwriter shall advise the Authority concerning its underwriting decisions.
 3. Limits. The limits of liability offered under the Memorandum of Insurance shall be established by the underwriting committee, using the following general guidelines:
 - a. Per-occurrence limits shall approximate two times the annual premiums collected under the program. The limits of liability shall be established annually (at each anniversary) and shall not be amended with mid-term addition or deletion of insurance.
 - b. Annual aggregate limits shall approximate four times the annual premiums collected under the Memorandum of Insurance. The purpose of this limitation is to assure that potential assessments are limited to a maximum relative to the annual aggregate exposure.

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The program Underwriter shall recommend limits of liability to the Underwriting Committee. The Underwriting Committee shall approve, disapprove, or modify such recommendation with just cause.

4. Assessments. In the event assessments are necessary, the Program Underwriter shall make recommendations to the Underwriting Committee. The committee, with good cause, may amend, reject, or accept the proposed assessment, and make a recommendation to the board. In the event a recommended assessment is reduced or rejected, and alternate funding mechanism shall be adopted by the Board as necessary to assure solvency of the program.

The assessment amount shall be allocated based on the following criteria:

1. The extent by which any city's losses have exceeded its contribution to the insurance program.
2. In any insurance year, the ratio of a city's claims pending to all cities' claims pending.
3. In any insurance year, the ratio of a city's premiums and other contributions to the total therefore of all cities.

- G. Assessment Payment. Assessments are due and payable within 30 days of date of mailing of notice by the Board.
- H. Exhaustion of Annual Aggregate Limits. In the event annual aggregate limits are reached for any insurance year, claims payments shall be made proportionally, based on the ratio total claims under the program bear to the annual aggregate limits under the Memorandum of Insurance.

ARTICLE 16 ACCOUNTS AND RECORDS

- A. Annual Budget. The Authority shall annually adopt an operating budget, pursuant to Article 8(c) of this agreement.
- B. Funds and Accounts. The treasurer of the Authority shall establish and maintain such funds and accounts as required by the Executive Committee and as required by good accounting practice. Books and records of the Authority in the hands of the treasurer shall be open to any inspection at all reasonable times by authorized representatives of cities and as otherwise required by law.
- C. Treasurer's Report. The treasurer, within 120 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Board and to each city.

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- D. Annual Audit. The auditor shall provide for a certified, annual audit of the accounts and records of the Authority, which audit shall be made by a certified public accountant and shall conform to generally acceptable auditing standards. A report thereof shall be filed as a public record with each of the cities. Such report shall be filed within six months of the end of the year under examination.

ARTICLE 17 RESPONSIBILITY FOR MONIES

- A. The treasurer of the Authority shall have the custody of and disburse the Authority's funds. He or she shall have the authority to delegate the signatory function of treasurer to such persons as are authorized by the Board.
- B. A bond in the amount determined adequate by the Board shall be required of all officers and personnel authorized to disburse funds of the Authority, such as bonds to be paid for by the Authority.
- C. The treasurer of the Authority shall assume the duties described in Government Code Section 6505.5, including:
1. Receive and acknowledge receipt for all money of the Authority and place it in the treasury of the Authority.
 2. Be responsible, upon his and her official bond, for the safekeeping and disbursement of all of the Authority money so held by him or her;
 3. Pay, when due, out of money of Authority so held by him or her, all sums payable on outstanding bonds and coupons of the Authority;
 4. Pay any other sums due from Authority money only upon warrants approved by the presidents of the Board or his or her designee and the risk manager. The warrants shall be drawn by the auditor, who shall be selected by the Board in accordance with the bylaws and laws.
 5. Verify and report monthly to the Authority and to cities the amount of money held for the Authority, the amount of receipts since the last report, and the amount paid out since the last report.
- D. The treasurer shall deposit the funds of the Authority in accordance with the investment policy required by law, and approved by the Board, in those instituting and investments permitted pursuant to Government Code section 53601 et seq.

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ARTICLE 18 RESPONSIBILITIES OF THE AUTHORITY

The Authority shall perform the following functions in discharging its responsibilities under this agreement:

- A. Provide an insurance program, as necessary, including, but not limited to, a self-insurance risk sharing fund, and commercial insurance (which may include excess coverage and umbrella insurance), by negotiation, bid, or purchases.
- B. Assist cities in obtaining insurance coverage for risks not included within the insurance program of the Authority, as permitted in Article 14(C).
- C. Assist each city with the implementation of risk management programs related to risks covered by the Authority's insurance program within the city.
- D. Provide loss prevention and safety consulting services to cities, as required.
- E. Provide claims adjusting and subrogation services for claims covered by the Authority's insurance program, as required.
- F. Provide loss analysis and control by the use of statistical analysis, data processing, and record and file-keeping services, in order to identify high exposure operations and to evaluate proper levels of self-insured retention (as to risk-sharing programs) and deductibles (as to commercial insurance).
- G. Conduct risk management audits to review the participation of each city in the insurance program.
- H. The Authority shall have such other responsibilities as deemed necessary by the Board of Directors in accordance with this agreement.

ARTICLE 19 RESPONSIBILITIES OF CITIES

Cities shall have the following responsibilities:

- A. Each city shall appoint a representative and at least one alternate to the Board of Directors, pursuant to Article 7 of this agreement.
- B. Each city shall maintain an active safety program and shall consider all recommendations of the Authority concerning unsafe practices.

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- C. Each city shall maintain its own set of records in all categories of risk covered by the insurance program of the Authority to insure accuracy of the Authority's loss reporting system until no longer deemed necessary by the Board.
- D. Each city shall pay its premium, and any assessment, within thirty (30) days of the invoice date. After withdrawal or termination, each city shall pay promptly to the Authority its share of any additional assessment when and if required of it by the Executive Committee under Article 24 or 25 of this agreement.
- E. Each city shall provide the Authority with such other information or assistance as may be necessary for the Authority to carry out the insurance program under this agreement.
- F. Each city shall, in any and all ways, cooperate with assist and assist the Authority, and any insurer of the Authority, in all matters relating to this agreement and covered claims and will comply with all bylaws, rules, and regulations adopted or approved by the Board of Directors.

ARTICLE 20 INTERIM PERIOD AND EFFECTIVE DATE OF PROGRAM

- A. Interim Period. Concurrently with approval of this agreement, each city shall approve and accept the proposed premium, fee quote, and Memorandum of Insurance from Driver Insurance. Such approval and acceptance shall be conditioned upon the formation of the Authority and the Authority's approval of the proposed premium fee and Memorandum of Insurance. Each city shall have thirty (30) days from the date of receiving such items in writing to consent by resolution to enter the Authority and accept the provisions of the Memorandum of Insurance.
- B. Effective Date. The proposed Memorandum of Insurance shall state that it shall be effective as of April 1, 1986.

ARTICLE 21 NEW MEMBERS

The Authority shall allow entry into its insurance program by new members only upon approval by the Board, or by the Executive Committee if specifically delegated such authority by resolution of the Board, which resolution may impose such conditions or limitations upon such authority of the Executive Committee as the Board deems appropriate. Cities entering under this article shall be required to pay their share of the organizational expenses, as determined by the Board, including expenses necessary to analyze their loss data and determine their premiums.

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ARTICLE 22 WITHDRAWAL

After an initial one-year, noncancellable commitment to the Memorandum of Insurance, a city may withdraw, provided it has given the Authority a six-month written notice of its intent to withdraw from this agreement and the Memorandum of Insurance.

ARTICLE 23 CANCELLATION

Notwithstanding the provisions of Article 22, the Authority shall have the right to cancel, for good cause, any city's participation in the Authority and Memorandum of Insurance upon a two-thirds vote of the entire Board of Directors, provided that a reasonable time shall be afforded, in the discretion of the Board of Directors, to place coverage elsewhere.

ARTICLE 24 EFFECT OF WITHDRAWAL

- A. The withdrawal of any city from this agreement shall not terminate the same, and a city, by withdrawing, shall not be entitled to payment or return of any earned premium, consideration, or property paid or donated by the city to the Authority, or to any distribution of assets, except as provided in Article 25(c).
- B. The withdrawal or cancellation of any city after the effective date of the Memorandum of Insurance or other elements of the insurance program shall not terminate its responsibility to contribute its share of premium or funds to the insurance program of the Authority, until all claims or other unpaid liabilities covering the period the city was a participant have been finally resolved and a determination of the final amount of payments due by the city or credits to the city for such period has been made by the Executive Committee. In connection with this determination, the Executive Committee may exercise similar powers to those provided for in Article 25(b) of this agreement.

ARTICLE 25 TERMINATION AND DISTRIBUTION

- A. This agreement may be terminated any time during the first year by the written consent of all cities and thereafter by the written consent of three-fourths of the cities; provided, however, that this agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of dividends, distribution of assets, and all other functions necessary to wind up the affairs of the authority. Withdrawn or cancelled members are entitled to participate in dividend distributions after accounting for their Board determined share of administrative expenses.
- B. The ~~Executive Committee~~ Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require cities, including those which were signatory

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hereto at the time a claim arose or was incurred, to pay their share of any additional assessment, in accordance with loss allocation formulas for final disposition of all claims and losses covered by this agreement. A city's share of such assessment shall be determined on the same basis as that provided for assessments in Article 15(c) and (d) of this agreement.

- C. Upon termination of this agreement, all assets of the Authority shall be distributed only among the parties that have been signatories hereto, including any of the cities which previously withdrew pursuant to Article 22 or were canceled pursuant to Article 23 of this agreement, in accordance with and proportionate to their cash contributions (including premium payments and property at market value when received) made during the term of this agreement. The Executive Committee shall determine such distribution within six months after disposal of the last pending claim or loss covered by this agreement.
- D. In the absence of an Executive Committee, the Risk Manager shall exercise all powers and authority under this Article. The decision of the Executive Committee or Risk Manager under this article shall be final.

ARTICLE 26 PROVISION FOR BYLAWS AND PLAN DOCUMENT

As soon as practicable after the first meeting of the Board of Directors, the Board shall cause to be developed and shall adopt Authority bylaws and a plan document to govern the day-to-day operations of the Authority. Each city shall receive a copy of any bylaws, plan document, or other document developed under this article.

ARTICLE 27 NOTICES

Notices to cities hereunder shall be sufficient if delivered to the clerk of the respective city.

ARTICLE 28 ENFORCEMENT

The Authority shall have the right to enforce this agreement. If any suit or other proceeding or arbitration is brought by the Authority, or any member, to enforce this agreement, the prevailing party shall be entitled to recover costs and expenses, including reasonable attorneys' fees. No court proceedings shall be initiated by the Authority, affected member, or withdrawn member agency, other than for the collection or return of assessments or premiums. Other disputes shall be resolved as provided in the bylaws.

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ARTICLE 29 INVALIDITY

Should any portion, term, condition, or provision of this agreement be determined by a court of competent jurisdiction to be illegal and in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portion, terms, conditions, and provisions shall not be affected thereby.

ARTICLE 30 TORT LIABILITY

Section 895.2 of the Government Code imposes certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code. Therefore, the parties hereto, as between themselves pursuant to the authorization contained in Sections 895.4 and 895.6 of the Government Code, each assumes the full liability imposed upon it or any of its officers, agents or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of the Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve this purpose each party indemnifies and hold harmless the other party for any loss, cost or expense that may be imposed upon such other party solely by virtue of Section 895.2 of the Government Code.

Upon exhaustion of aggregate policy limits, as described in Article 15, under the Memorandum of Insurance (and excess insurance, if obtained) for any insurance year, no city or party shall be assessed or held in any way responsible for the claims or losses of any other city which are excess of such limits; and any expenses that may reasonably be incurred as a result of such excess claims. Accordingly, this agreement does not affect city claims processing or payment after exhaustion of aggregate policy limits; however, such claims management procedures may be considered by the Authority in evaluating the conformance of city risk management practices with Authority standards.

ARTICLE 31 CLAIMS, LITIGATION, OR JUDGMENTS AGAINST THE AUTHORITY

- A. Defense of Claims. As to any claim or action against the Authority which is based on or arises out of an occurrence involving an officer or employee of the Authority during the course and in the scope of such duties, who is also an officer or employee of a city, such claim or action against the Authority will be defended by the Authority to the extent required by law. Such claims or actions shall not be considered claims or actions against such city solely as a result of employment by the Authority.
- B. Claims and Judgment Against the Authority. Claims and judgments against the Authority shall be paid from, or charged to, the appropriate coverages or self-insured funds the Authority has established against such claims, judgments or losses. Such amounts shall be paid from the Authority's own coverage or self-insured funds.

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- C. Arbitration. Any differences, claims or matters in dispute arising between or among members shall, if such differences arise out of this agreement or the bylaws, be submitted by such members to arbitration by the American Arbitration Association or its successor under the pertinent provisions of the laws of the State of California relating to arbitration, except as provided below. The decision of the arbitrator(s) may be entered as a judgment in any court of the State of California or elsewhere. Costs of arbitration, including reasonable attorneys' fees, shall be recoverable in arbitration.
- D. Authority Representation Conflicts. Any differences, claims or matters in dispute arising between or among members shall, if such differences do not arise out of this agreement or the bylaws, be handled as follows:
1. After being notified in writing that one member agency has filed a formal claim against another in accordance with provisions of the Government Code, the Authority can no longer act on behalf of either member insofar as the case giving rise to the claim is concerned if the claim involves a risk covered by the Memorandum of Insurance, or other risk-sharing insurance policy of the Authority in which each of the involved members is a participating member.
 2. Conversely, the Authority may continue to act on behalf of a participating member, even after receipt of written notice of a formal claim filed by one member agency against another, provided the claim only involves a risk-sharing insurance policy of the Authority in which only one of the involved member agencies is participating.

In any case falling within the boundaries of (1) or (2) above, the Authority may, in its discretion, act on behalf of one or all involved members, provided that the Authority first obtains the written consent of each involved member; provided that the failure of the Authority to act on behalf of any member under this section shall not affect the Authority's obligation to provide coverage, including coverage of legal defense costs under the Memorandum of Insurance or other risk-sharing insurance of the Authority.

ARTICLE 32 PROHIBITION AGAINST ASSIGNMENT

No city may assign any right, claim, or interest it may have under this agreement, and no creditor, assignee or third-party beneficiary of any city shall have any right, claim, or title to any part, interest, fund, premium, or asset of the Authority.

ARTICLE 33 AGREEMENT COMPLETE

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

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IN WITNESS WHEREOF, the parties hereto have first executed this agreement by authorized officials thereof on the date indicated below:

City of Chula Vista
By:

Authorized by Resolution No.

City of Coronado
By:

Authorized by Resolution No.

City of Del Mar
By:

Authorized by Resolution No.

City of Encinitas
By:

Authorized by Resolution No.

City of Escondido
By:

Authorized by Resolution No.

City of Imperial Beach
By:

Authorized by Resolution No.

City of Lemon Grove
By:

Authorized by Resolution No.

City of National City
By:

Authorized by Resolution No.

City of Oceanside
By:

Authorized by Resolution No.

City of Santee
By:

Authorized by Resolution No.

City of Solana Beach
By:

Authorized by Resolution No.

City of Vista
By:

Authorized by Resolution No.